No. 88-1916

IN THE

# Supreme Court of the United States

October Term, 1988

STATE OF MINNESOTA,

*Petitioner,*

vs.

ROBERT DARREN OLSON,

*Respondent.*

ON WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

## JOINT APPENDIX

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PETITION FOR CERTIORARI DOCKETED MAY 26, 1989
CERTIORARI GRANTED OCTOBER 2, 1989

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# JOINT APPENDIX

## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

August 11, 1987—Defendant indicted by Hennepin County Grand Jury on charges of first degree intentional murder, first degree felony murder, aggravated robbery and second degree assault.

December 7, 1987—Defendant arraigned and pled not guilty to all counts.

December 15-16, 1987—Pretrial evidentiary hearing held in Hennepin County District Court on defense motion to suppress evidence on Fourth Amendment grounds; Court requests written memoranda from counsel before ruling.

January 19, 1988—Defendant submits Memorandum of Law supporting Motion for Suppression of Evidence.

January 27, 1988—State submits Memorandum of Law opposing Defendant's Motion for Suppression of Evidence.

January 29, 1988—Hennepin County District Court issues Order and Memorandum denying Defendant's Motion to Suppress Evidence.

February 5, 1988—Jury trial begins in Hennepin County District Court.

February 11, 1988—Jury finds Defendant guilty of first degree felony murder, aggravated robbery and second degree assault.

February 11, 1988—Defendant sentenced to life imprisonment for murder and a concurrent nine year term for three counts of aggravated robbery.

February 19, 1988—Defendant files Motion for New Trial, alleging numerous trial errors, including the trial court's refusal to grant his motion to suppress evidence.

March 8, 1988—Hearing on Defendant's Motion for New Trial in Hennepin County District Court; Court denies Motion for New Trial.

March 29, 1988—Defendant files Notice of Appeal to Minnesota Supreme Court.

July 25, 1988—Defendant files Brief seeking review of his conviction, alleging numerous trial errors, including the trial court's refusal to grant Defendant's suppression motion.

October 4, 1988—State submits Brief opposing reversal of Defendant's conviction.

October 14, 1988—Defendant submits Reply Brief to Minnesota Supreme Court.

January 11, 1989—Case argued in the Minnesota Supreme Court.

February 24, 1989—Minnesota Supreme Court issues opinion reversing Defendant's convictions and remanding the case for a new trial.

March 6, 1989—State's Petition for Rehearing filed in Minnesota Supreme Court.

March 28, 1989—State's Petition for Rehearing summarily denied by Minnesota Supreme Court.

May 26, 1989—State's Petition for Writ of Certiorari docketed in the United States Supreme Court.

October 2, 1989—State's Petition for Writ of Certiorari granted.



State of Minnesota — District Court
County of Hennepin — Fourth Judicial District

File No. 94726-2

STATE OF MINNESOTA,

Plaintiff,

v.

ROBERT D. OLSON,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

The above-entitled matter came duly on for *Rasmussen* hearing before the undersigned Judge of District Court on December 15th and 16th, 1987.

Mr. Gary S. McGlennen, Assistant Hennepin County Attorney, appeared on behalf of the state.

Mr. Glenn P. Bruder, Esq., appeared on behalf of the defendant, who was also present.

The Court, having considered all files, records and proceedings herein, together with the memorandae and arguments of counsel, now makes the following:

FINDINGS OF FACT

1. That on July 18, 1987 a lone gunman entered the Amoco Station at 1000 University Avenue in Minneapolis.

2. That the gunman committed an armed robbery during the course of which the station manager, Roger Reinhart, was fatally shot.

3. That the gunman then fled the service station.

4. That Minneapolis Police Officers Scott Grabowski and Duane Pihl heard a police dispatcher report the robbery, shooting and suspect's appearance.

5. That Officer Pihl believed, because of a police report he had received, that this suspect might be one Joseph Ecker, who resided at 2420 Polk Avenue Northeast.

6. That the officers proceeded to that location where they observed a brown Oldsmobile proceeding northbound in the alley between 24th Street and Lowry Avenue.

7. That the officers exited their squad car and drew their weapons and began approaching the vehicle.

8. That the vehicle began backing rapidly away from the officers northbound down the alley towards Lowry Avenue.

9. That the officers re-entered their squad car and began to pursue the vehicle.

10. That the driver of the vehicle lost control of the vehicle as he turned onto Lowry Avenue and the car stopped.

11. That two individuals exited the vehicle and fled the area on foot.

12. That other Minneapolis Police Officers arrived on the scene and the house at 2420 Polk was searched; Joseph Ecker was taken into custody and subsequently identified as the gunman who had entered the Amoco Station.

13. That a search of the vehicle turned up a certificate of title on which Robert Olson's name appears, a letter address to Roger Olson, and a video movie rental receipt made out to Robert Olson and dated July 16, 1987.

14. That on Sunday, July 18, 1987, Sergeant James DeConcini was on duty in the Homicide Division of the Minneapolis Police Department.

15. That Sergeant DeConcini knew that there had been a robbery-homicide at the Southeast Amoco the day before; knew that the brown Oldsmobile had been linked to this robbery-homicide; knew that one occupant of the Oldsmobile, a caucasian male, was still at large; and knew that physical



evidence found in the Oldsmobile linked the vehicle to one Robert Olson.

16. That on Sunday morning, Sergeant DeConcini learned from Sergeant Robert Nelson that a "Diana Murphey" had called and stated that a "Rob" was the driver of the car involved in the robbery-homicide and that "Rob" was planning to leave town by bus soon.

17. That later that same day, a caller identifying herself once again as "Diana Murphey" telephoned Sergeant DeConcini and stated that "Rob" had told three people that he was the driver of the brown Oldsmobile used in the robbery-homicide and that two of the people he had told this to were "Julie" and "LouAnne" of 2406 Fillmore Northeast.

18. That Sergeant DeConcini sent Minneapolis Police Officers to 2406 Fillmore Northeast to verify this information.

19. That when the officers arrived at 2406 Fillmore they learned that the dwelling was a duplex and that Julie and LouAnne Bergstrom resided in the upper apartment.

20. That the officers talked to the resident of the lower apartment, Helen Niederhoffer, who told them that Rob Olson was staying upstairs but was not there at that time; Ms. Niederhoffer stated she would call the police when Robert Olson returned.

21. That Sergeant DeConcini issued a pick-up order for Robert Olson at approximately 2:00 p.m.

22. That at approximately 2:30 p.m. Helen Niederhoffer called Sergeant DeConcini and stated that Robert Olson had returned to the upstairs apartment at 2406 Fillmore.

23. That Sergeant DeConcini then dispatched officers to 2406 Fillmore.

24. That when the officers had taken up positions outside the residence, Sergeant DeConcini telephoned the residence

and spoke with Julie Bergstrom; Sergeant DeConcini told Julie Bergstrom that he wanted Robert Olson to go outside and Sergeant DeConcini heard a male voice say, "Tell them I left."; Julie Bergstrom then stated, "Rob left already."

25. That Sergeant DeConcini related this information to the officers stationed outside the residence.

26. That the officers then entered the residence at 2406 Fillmore and arrested Robert Olson.

27. That at the Rasmussen hearing Dianna Joe Humphrey testified that she resided at the address given by the caller to Sergeant DeConcini and that her phone number matched the number given by the caller to the sergeant, but that she never made any calls to anyone regarding Robert Olson.

28. That Robert Olson testified that he had stayed at 2406 Fillmore for one night, had no bed there and had slept on the floor, had no closet, dresser, toothbrush, and only one bag of clothes, and was reluctant to return to 2420 Polk, where he had been living previously, because he knew that the police had arrested Joseph Ecker there and had searched that premises.

CONCLUSIONS OF LAW

1. The warrantless arrest of the defendant at 2406 Fillmore Northeast was not violative of his Fourth Amendment rights.

2. Defendant had no reasonable expectation of privacy in the residence at 2406 Fillmore Northeast.

3. Probable cause existed to arrest the defendant without a warrant at 2406 Fillmore Northeast.

4. There being no violation of the defendant's Fourth Amendment rights, there are no grounds for excluding and suppressing any evidence derived, directly or indirectly, from the defendant's arrest at 2406 Fillmore.



ORDER

1. Defendant's motion to exclude and suppress any and all evidence, directly or indirectly derived from his arrest at 2406 Fillmore is hereby denied in all respects.

2. The attached memorandum is hereby incorporated by reference.

Dated: January 29, 1988.

By The Court:
JAMES H. JOHNSTON
Judge of District Court

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MEMORANDUM

THE WARRANTLESS ARREST OF THE DEFENDANT WAS NOT VIOLATIVE OF HIS FOURTH AMENDMENT RIGHTS. ANY AND ALL EVIDENCE DERIVED DIRECTLY OR INDIRECTLY FROM THIS ARREST WILL THEREFORE NOT BE EXCLUDED OR SUPPRESSED.

I. Defendant had no reasonable expectation of privacy in the dwelling located at 2406 Fillmore Northeast.

In order to successfully move to suppress evidence, the defendant must have had a reasonable expectation of privacy in the area searched. See, *State v. Brown*, 345 N.W.2d 233, 237 (Minn. 1984). If the defendant had no such expectation of privacy, then he lacks the requisite standing to challenge the constitutionality of the police conduct. If the defendant did in fact have a reasonable expectation of privacy, the Court will then inquire whether the defendant exhibited an actual expectation of privacy (see *United States v. Chadwick*, 433 U.S. 1 (1977) and whether his expectation is one that society recognizes as reasonable, (see *Smith v. Maryland*, 442 U.S. 735 (1979)).

In the present case, the Court finds that the defendant had no legitimate expectation of privacy in the dwelling at 2406 Fillmore and therefore lacks standing to challenge the evidence derived from his arrest at that location. Furthermore, the Court finds that, even if defendant did have a legitimate expectation of privacy at 2406 Fillmore for purposes of standing, the defendant did not exhibit any actual expectation of privacy in that dwelling and also that any expectation of privacy the defendant had was unreasonable.

The Court finds that the defendant had no legitimate expectation of privacy for the following reasons. Defendant's abode for a number of weeks before July 19, 1987 was 2420 Polk, not 2406 Fillmore. Defendant was reluctant to return to 2420 Polk because he knew that Joseph Ecker had been arrested there in connection with the robbery-homicide at the Southeast Amoco and also that the police had searched the dwelling on Polk. The defendant had been linked to this robbery-homicide by evidence found in the vehicle used to flee the scene and by tips from an informant. Defendant was not the owner of the property at 2406 Fillmore. He was not a tenant at the house. Defendant had spent only one night there when he was arrested. He had no dresser or closet and only one bag of clothes with him. He had no bed but instead slept on the floor. He did not have a toothbrush at 2406 Fillmore. Based on these facts, the Court finds that the defendant had no legitimate expectation of privacy in the dwelling at 2406 Fillmore and therefore lacks standing to challenge any and all evidence against him procured as a result of his arrest at that location.

Furthermore, the Court finds defendant's statement to Julie Bergstrom (telling her to tell the police that he had left the premises) shows that defendant did not exhibit any expectation of privacy in the dwelling at 2406 Fillmore. The Court



also finds that since the defendant had been connected with a robbery-homicide and was reluctant to return to his usual abode on Polk, the defendant was not an invited guest at 2406 Fillmore but rather a fugitive from a criminal investigation. The Court therefore finds that any expectation of privacy the defendant may have had was unreasonable.

In conclusion, the Court finds that the defendant had no legitimate expectation of privacy in the premises at 2406 Fillmore. Defendant therefore lacks standing to challenge the evidence procured against him as a result of his arrest at that location. Defendant did not exhibit any actual expectation of privacy in that dwelling and any expectation of privacy the defendant may have had, for purposes of argument, was unreasonable.

II. The police had probable cause to arrest the defendant at 2406 Fillmore without an arrest warrant.

Probable cause is defined as:

> A reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty.

*State v. Olson*, 342 N.W.2d 638, 640 (Minn.Ct.App.); *State v. Childs*, 269 N.W.2d 25, 27 (Minn. 1978). Where the police have arrested a suspect without a warrant the test is whether the officer in the particular circumstances, conditioned by his own observations and information, and guided by the whole of his police experience, reasonably could have believed that a crime had been committed by the person to be arrested. *State v. Merrill*, 274 N.W.2d 99 (Minn. 1980). Although the Fourth Amendment prohibits the police from making a warrantless entry into the suspect's home to make an arrest, absent consent or hot pursuit, the defendant in this case was not in his own home and, as has already been discussed, had no legiti-

mate expectation of privacy in the dwelling where he was arrested. The issue is whether Sergeant DeConcini had probable cause to order the arrest of the defendant at 2406 Fillmore on July 19, 1987. For the following reasons, the Court finds that probable cause did exist to arrest the defendant.

At the time of the defendant's arrest, Sergeant DeConcini knew that a robbery-homicide had occurred at the Southeast Amoco. He also knew that two pieces of physical evidence, a certificate of title and a movie rental receipt, had been found in the vehicle that had been linked to the robbery-homicide and that these pieces of evidence implicated the defendant. Sergeant DeConcini was also aware of two telephone calls from a "Diana Murphey" who stated that "Rob" had told "Julie" and "LouAnne" that he had driven this vehicle and that he was planning to leave town soon by bus. This "Diana Murphey" had also stated that "Julie" and "LouAnne" resided at 2406 Fillmore Northeast. Sergeant DeConcini sent Minneapolis police officers to verify the tip. The officers went to 2406 Fillmore Northeast and did verify that the upper portion of the duplex was occupied by Julie and LouAnne Bergstrom and that Robert Olson was in fact staying there.

At the Rasmussen hearing the defendant, through counsel, contended that because there is no such person as "Diana Murphey" the statements from this person can not form the basis for probable cause to arrest the defendant. (There is a Dianna Joe Humphrey living at the address given by the informant, but Ms. Humphrey denied making any calls to Sergeant DeConcini or anyone in the Minneapolis Police Department.) The Court can not agree with this argument.

As a dispositive matter, the Court finds that Sergeant DeConcini had probable cause to order the defendant's arrest even without the information provided by "Diana Murphey".



Sergeant DeConcini knew that a robbery-homicide had occurred at the Southeast Amoco Station one day earlier and that one suspect had been captured after a short car chase and that another male caucasian suspect was still at large. The sergeant knew that the vehicle which had been the subject of the brief chase, and which the two suspects had occupied, had been searched and that evidence had been discovered inside it linking the vehicle to the robbery-homicide and a Robert Olson to the vehicle. The Court finds that under these circumstances, Sergeant DeConcini, conditioned by his own observations and information, and guided by his police experience, could reasonably have believed that the defendant had been involved in the robbery-homicide at the Southeast Amoco Station of July 18, 1987, even without considering the information provided by "Diana Murphey".

The Court also finds that the information provided by "Diana Murphey" could properly be considered by Sergeant DeConcini for purposes of establishing probable cause even though the true identity of "Diana Murphey" was and remains unknown. The credibility of an (anonymous) informant's information may be established by sufficient corroboration of the details of the tip so that it is clear that the informant is telling the truth on this occasion. *State v. Causey*, 257 N.W.2d 288 (Minn. 1977). The Court finds that the police did sufficiently corroborate the information they received from "Diana Murphey".

The information that "Diana Murphey" gave to the police was that "Rob" was the driver of the getaway car and that he was planning to leave town soon on a bus. "Diana Murphey" also told Sergeant DeConcini that "Rob" had admitted his involvement in the robbery-homicide to three people, two of whom were "Julie" and "LouAnne", who lived at 2406 Fill-

more. The police went to 2406 Fillmore and verified that Julie and LouAnne Bergstrom did in fact live at that address. The police also confirmed that a Robert Olson was staying with Julie and LouAnne in their upper duplex apartment. Later that day before entering the residence to arrest the defendant, Sergeant DeConcini confirmed that there was a "Rob" in the premises at that time and that "Rob" wanted the police to believe that he had left the dwelling. Although the police did not confirm every aspect of "Diana Murphey's" tip, they did verify that two women named Julie and LouAnne lived at the address stated by "Diana Murphey", that a Robert Olson was staying with them, and that a "Rob" was in the dwelling when Sergeant DeConcini called the residence and that "Rob" did not want the police to know that he was still there when the sergeant telephoned.

The Court concludes, based on the foregoing facts, that it was reasonable for Sergeant DeConcini to believe the credibility of an anonymous informant under these circumstances. Given the aspects of the tip that were corroborated and verified by the police, it was reasonable for Sergeant DeConcini to believe that the remainder of the information in the tip was reliable as well. The Court finds that the details of "Diana Murphey's" information were sufficiently corroborated so that it was clear to Sergeant DeConcini that this anonymous informant was telling the truth.

In conclusion, the Court finds that there was probable cause to arrest the defendant without a warrant. There was sufficient evidence discovered in the suspected getaway vehicle to establish probable cause against the defendant. The information supplied by "Diana Murphey" was furthermore sufficiently corroborated by the police to justify Sergeant DeConcini's belief that the tip was true.



## CONCLUSION

The Court has found that the defendant had no legitimate expectation of privacy in the dwelling at 2406 Fillmore. Therefore the defendant lacks the requisite standing to challenge the legality of the evidence procured from his arrest on Fourth Amendment grounds. The Court has also found that probable cause existed under the facts and circumstances of this case to justify the warrantless arrest of the defendant. Defendant's motion to exclude and suppress the evidence obtained as a direct or indirect result of his arrest on July 19, 1987 must there be and is hereby denied.

J.H.J.

STATE OF MINNESOTA
IN SUPREME COURT

C3-88-687

Hennepin County — Simonett, J.
Took no part, Keith, J.

STATE OF MINNESOTA,

Respondent,

vs.

ROBERT DARREN OLSON,

Appellant.

Filed February 24, 1989
Office of Appellate Courts

SYLLABUS

Warrantless entry of defendant's dwelling, in absence of exigent circumstances, requires suppression of defendant's statement and, hence, a new trial.

Reversed and remanded for a new trial.

Heard, considered, and decided by the court en banc.

OPINION

SIMONETT, Justice.

Defendant Robert Olson appeals his conviction for first degree murder, three counts of armed robbery, and three counts of second degree assault. He claims, among other things, that his arrest was illegal, lacking probable cause and accomplished by a warrantless entry of the place where he was staying. We conclude Robert Olson's constitutional rights were violated by the warrantless entry requiring suppression of tainted evidence, and reverse for a new trial.



On Saturday morning, July 18, 1987, shortly before 6 a.m., a lone gunman robbed an Amoco station in Minneapolis, shooting to death the station manager. The police were quickly alerted and, from the description of the robbery, suspected Joseph Ecker. Two officers drove to Ecker's home, arriving at about the same time as a brown Oldsmobile pulled up. The Oldsmobile tried to escape, spun out of control, and came to a stop. Two white males got out of the car and fled on foot. In short order one of the two men, who proved to be Joseph Ecker and who was identified as the robber-gunman, was captured inside his home. The other man, unidentified but described as tall, thin, a white male in his early twenties with sandy brown hair, escaped. It was now about 6:15 a.m.

Inside the abandoned Oldsmobile police found a sack of money and the weapon soon thereafter identified as the murder weapon. Also in the car was a title certificate showing the Oldsmobile's owner to be Keith Jacobson. The name Rob Olson appeared on the certificate as a secured party but with the name crossed out; the bottom half of the certificate, used to transfer title, was missing. There was also a letter in the car, dated May 11, 1987, from an insurance company addressed to *Roger R.* Olson, 3151 Johnson Street. A second search of the car pursuant to a search warrant revealed a videotape rental receipt dated July 16, 1987 (2 days earlier), issued to Rob Olson. The police verified that a Robert Olson lived at 3151 Johnson Street. The police talked to Ecker and a woman who had been in the house when Ecker was arrested. Neither identified Robert Olson as having been in the getaway Oldsmobile or connected with the robbery. The woman gave the names of persons who had been with Ecker the night before; Olson's name was not among them. The police were unable to locate Keith Jacobson.

The next day was Sunday, July 19. In the morning a woman called the police and said a man by the name of Rob was the driver of the getaway car and was planning to leave town by bus. The caller gave her name as Dianna Murphy. About noon the woman called again, said she was Dianna Murphy, and gave her address and phone number. She said that a woman named Maria lived on Garfield Northeast and gave Maria's phone number. Maria, she said, had told her that a man named Rob had admitted to Maria and to two other women, Louanne and Julie, that he was the driver in the Amoco robbery. The caller said Louanne was Julie's mother and the two women lived at 2406 Fillmore Northeast.

The detective-in-charge who took the second telephone call did not attempt to verify the identity of the caller. If he had, he would have learned no one by the name of Dianna Murphy lived at the address and phone number given. Neither was Maria contacted. The detective did, however, send police officers to 2406 Fillmore to check out Louanne and Julie. The Fillmore address proved to be a duplex. Louanne Bergstrom and her daughter Julie resided in the upper unit but were not home. Louanne's mother (Julie's grandmother) lived in the lower unit. She confirmed that a Rob Olson had been staying upstairs and promised to call the police when Olson returned. The grandmother was not aware of Olson's involvement in any robbery. A pickup order was then issued for Olson's arrest.

About 2:45 p.m., the grandmother called police and said Olson had returned. The detective then instructed police officers to surround the house. No effort was made to obtain an arrest warrant. The detective later explained in court that he had never attempted to get an arrest warrant on a weekend during his 20 years on the force. After the house was surrounded, the detective phoned Julie and told her Rob should come out of the house. The detective heard a male voice say "tell them I left." Julie then said that Rob had left, whereupon the detective ordered the police to enter the house. They did so with drawn weapons and without seeking permission. Defendant Olson, age 19, was found hiding in a closet.



After his arrest, defendant admitted to the police that he had driven Joseph Ecker from Ecker's house to an apartment building on Second Avenue Southeast near the Amoco station on University Avenue. Olson said Ecker had asked for a ride to pick up a girlfriend; that on the way he stopped at the Amoco station to buy cigarettes and pop; and that he then parked by the apartment building about a block from the station. He said Ecker was gone about 10 minutes and returned with a gun and a bag and ordered Olson to drive him home. Olson said he fled from the police at the Ecker house because he was scared of Ecker. Subsequent investigation disclosed that Olson had bought the Oldsmobile from Keith Jacobson but title had not yet been transferred. Defendant's defense at trial was that he had been duped into driving Ecker to the scene of the robbery.

The two main issues on appeal concern the legality of defendant's arrest. Was there probable cause? Did circumstances justify a warrantless, nonconsensual entry of the duplex? Defendant argues both these questions must be answered no, and, therefore, evidence obtained from his arrest—most importantly, his statement to the police—should have been suppressed.

I.

When police have arrested a suspect without a warrant, the test is whether the officers in the particular circumstances, conditioned by their own observations and information and

guided by the whole of their police experience, reasonably could have believed that a crime had been committed by the person to be arrested. *State v. Merrill*, 274 N.W.2d 99, 108 (Minn. 1978). A determination of whether the police had probable cause to arrest is a determination of constitutional rights, and this court makes an independent review of the facts to determine the reasonableness of the police officer's actions. *See Ker v. California*, 374 U.S. 23, 34 (1963).

At the time of defendant's arrest the police knew that a robbery-homicide had occurred. They had arrested one suspect, Joseph Ecker, and had a description of the unknown driver. In the getaway car was a certificate of title listing Keith Jacobson as the car's owner. The name Rob Olson was on the title certificate but as a secured party and the name was crossed out. A receipt for a videotape rental, dated 2 days earlier, was also in the car, issued to Robert Olson.

The trial court found that this physical evidence alone, without the informant's tip, was sufficient to establish probable cause. We have our doubts. As defendant points out, this evidence only suggested Olson might have had some property or lien interest in the getaway car and that he may have ridden in the car 2 days before the robbery. Keith Jacobson would seem to have been a more likely suspect. Significantly, although the police had this physical evidence on Saturday, they did not issue a pick-up order for Olson until Sunday, after receiving the telephone tip from "Dianna Murphy."

Consequently, the question becomes whether the tip was reliable and if it together with the physical evidence establishes probable cause. In evaluating an informant's tip, the court looks at the commonsense totality of the circumstances, including the informant's veracity, reliability, and basis of knowledge. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). In this



case, the police knew nothing about the informant's identity or reliability. If the police had called the number "Dianna Murphy" gave them or checked her name in the telephone directory, they would have found there was no such person. The caller did not claim any personal knowledge of the information related, simply passing on what she had apparently been told by Maria, another unidentified source. On the other hand, the police did verify that at least part of the information given was correct, namely, that two women named Louanne and Julie lived at the address given and that a Rob Olson was staying there. The police also knew that the getaway car was connected in some way with a man named Rob Olson, which lent credence to the informant's statement that Rob Olson was the driver of the getaway car.

"[T]he fact that police can corroborate part of the informant's tip as truthful may suggest that the entire tip is reliable." *State v. Siegfried*, 274 N.W.2d 113, 115 (Minn. 1978). In *Siegfried*, however, the informant was known to the police as a reliable private citizen and had obtained the reported information by personal observation; further, the information had been accepted by a magistrate in granting an application for a search warrant. *See also State v. Wiley*, 366 N.W.2d 265 (Minn. 1985) (corroboration on a non-key item and informant had history of past reliability). The trial court here relied on *State v. Causey*, 257 N.W.2d 288 (Minn. 1977); but in *Causey* a magistrate had found probable cause for issuing a search warrant based on information supplied by a known reliable informant who accompanied the officer to the defendant's residence, where a car registered to a convicted drug possessor was parked. *Cf. State v. Eling*, 355 N.W.2d 286 (Minn. 1984) (police made extensive efforts verifying informant's identity and source of information). Nevertheless,

there is force to the state's argument in this case that "Dianna Murphy's" tip was sufficiently corroborated so that, together with other known information, there was probable cause.

A review of our cases reveals, what should come as no surprise, that the "totality of the circumstances" test is fact-specific. In this case we conclude we need not resolve the probable cause issue because the issue of warrantless entry, which we next discuss, proves to be dispositive.

II.

Defendant claims the warrantless entry of the duplex at 2406 Fillmore to seize him was a violation of his fourth amendment rights. The state counters that defendant lacks standing to make this challenge; but, even if standing exists, exigent circumstances justified the warrantless entry of the duplex. We conclude defendant's constitutional rights were violated.

It is unclear why an arrest warrant was not obtained in this case, particularly since we have encouraged law enforcement officers to obtain a warrant whenever possible. *See Merrill*, 274 N.W.2d at 108. The previous day, Saturday, the police had no difficulty in obtaining a search warrant for the car in 2½ hours. Here, however, apparently no attempt was made to obtain an arrest warrant because it was Sunday, surely a curious reason for not observing the constitutional safeguards of citizens.

A.

For defendant Olson to challenge the warrantless entry and seizure of his person at Louanne's house, he must show a legitimate expectation of privacy in the upper duplex at 2406 Fillmore. *See State v. Brown*, 345 N.W.2d 233, 237 (Minn. 1984). For some days prior to the robbery, Olson had been living with Ecker at 2420 Polk. On Friday night he did not



return to Ecker's house until 4:30 a.m., having been out on a date. On Saturday night Olson did not return to Ecker's house, nor to his own, because he was afraid of being arrested; instead he stayed that night at Louanne Bergstrom's duplex. The trial court found that Olson had no reasonable expectation of privacy in the 2406 Fillmore residence. The court said Olson was not a tenant; that he had no possessions at the duplex except for a change of clothes; and that he slept on the floor. This ruling ignores, however, the fact that Olson had permission to stay at 2406 Fillmore for some indefinite period, and that Louanne Bergstrom testified Olson had the right to allow or refuse visitors entry. While the United States Supreme Court has rejected the notion that anyone legitimately in a dwelling automatically has standing to challenge an illegal search, *Rakas v. Illinois*, 439 U.S. 128, 142 (1978), this does not mean that a guest never has standing. *See also United States v. Salvucci*, 488 U.S. 83 (1980) (overruling the holding in *Jones v. United States*, 362 U.S. 257 (1960) that possession of a seized good creates standing). Indeed, this case is quite similar to *Jones*, where an expectation of privacy was found. Jones had permission to stay at a friend's apartment; he had a key; he had a change of clothes; his home was elsewhere; and he had slept at the friend's apartment for "maybe a night." *Id.* at 259. Although the *Rakas* court subsequently qualified the rationale of *Jones*, it expressly reaffirmed the factual holding of that case. *Rakas*, 439 U.S. at 142-43. *See also Steagald v. United States*, 451 U.S. 204, 230-31 (1981) (Rehnquist, J., dissenting).

The trial court thought it significant that Olson was trying to evade the police so that his presence at 2406 Fillmore was "wrongful." Not so. A reasonable expectation of privacy is not forfeited (nor to be emasculated) because of the defen-

dant's motives for seeking privacy. As LaFave explains, "to deny standing merely because it turns out the defendant had a criminal purpose is in sharp conflict with the rationale underlying the exclusionary rule." 4 W. LaFave, *Search and Seizure* § 11.3(b) at 299 (2d ed. 1987).

Finally, the state argues that defendant had no *actual* expectation of privacy. In *Smith v. Maryland*, 442 U.S. 735, 740 (1979), the United States Supreme Court said that to challenge an illegal search a defendant must have an actual expectation of privacy as well as one that society is prepared to recognize as reasonable. The trial court thought that defendant's statement to Julie, "tell them I've left," indicated that defendant had no actual expectation of privacy at 2406 Fillmore. We think not. This statement more likely suggests that defendant was simply attempting to discourage the police from invading his privacy by giving them a further reason, albeit of doubtful plausibility, not to enter the house.

We hold that defendant has standing to challenge the legality of his arrest.

B.

The right to be secure in the place which is one's home, to be protected from warrantless, nonconsensual intrusion into the privacy of one's dwelling, is an important fourth amendment right. *See, e.g., Welsh v. Wisconsin*, 466 U.S. 740, 749 (1984); *State v. Storvick*, 428 N.W.2d 55, 61 (Minn. 1988). To justify a warrantless arrest in a defendant's home, the state must show urgent need, *i.e.*, the presence of exigent circumstances. We make our own evaluation of the found facts (which in this case are not in dispute) in concluding whether exigent circumstances exist. *Storvick*, 428 N.W.2d at 58 n. 1. In making this determination, we have used the so-called *Dorman* analysis, with the understanding that the *Dorman* factors are part of a flexible approach that encompasses all relevant



circumstances. *State v. Lohnes*, 344 N.W.2d 605, 611 (Minn. 1984).[1] Thus, a warrantless intrusion may be justified by hot pursuit of a fleeing felon, or imminent destruction of evidence, *Welsh*, 466 U.S. 740, or the need to prevent a suspect's escape, or the risk of danger to the police or to other persons inside or outside the dwelling. *Lohnes*, 344 N.W.2d 605; *State v. Hatcher*, 322 N.W.2d 210 (Minn. 1982).

In this case the state claims exigent circumstances for a warrantless arrest in Louanne's duplex because defendant was a suspect in a murder, guns had been found in the getaway car, defendant had fled the police once, and there was information that he might try to flee again.

While it is true a grave crime was involved, it is also true that the suspect was known not to be the murderer but thought to be the driver of the getaway car. Probable cause to believe the suspect was the driver depended, as we have seen, in large part on the reliability of the unknown informant. The police had already recovered the murder weapon. The suspect had not left town by bus, at least not yet, as the telephone tip had indicated, but had returned to the duplex where he had stayed the previous night. The police knew that Louanne and Julie were with the suspect in the upstairs duplex with no suggestion of danger to them. Three or four Minneapolis police squads surrounded the house. The time was 3 p.m., Sunday.

We do not think the particular circumstances of this case amount to exigent circumstances. It was evident the suspect

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[1] The *Dorman* analysis considers: (a) whether the offense is a grave offense, particularly a crime of violence; (b) whether the suspect is reasonably believed to be armed; (c) whether the showing of probable cause connecting the defendant to the offense is more than minimal; (d) whether the police have strong reason to believe that the suspect is in the premises being entered; and (e) whether there is a likelihood that the suspect will escape if not swiftly apprehended. *Dorman v. United States*, 435 F.2d 385, 392-93 (D.C. Cir. 1970).

was going nowhere. If he came out of the house he would have been promptly apprehended. This case is unlike *Lohnes*, for example, where the suspect was believed to have committed the crime of violence, probable cause was strong, and the weapon had not been found. In *Lohnes*, too, the dwelling was in an isolated rural area, distant from a magistrate, the time 5 a.m., and it was doubtful if sufficient police resources were on hand to contain the suspect until an arrest warrant could be obtained. *Lohnes*, 344 N.W.2d at 611-12.

Cases from other jurisdictions are split on whether surveillance or a stake-out should be used to gain time to obtain an arrest warrant. *See* 2 W. LaFave, *Search and Seizure* § 6.1(f), at 605-08 (2d ed. 1987). Again, the differing circumstances can explain the differing results. Sometimes a stake-out will adequately freeze the situation, while on other occasions the ensuing delay may increase the chances of escape or danger to others. LaFave suggests a distinction between an arrest which is planned in advance and an arrest in medias res, which occurs in the field as part of unfolding developments. *Id.* Thus, in *Lohnes*, we pointed out that the arrest was the culmination of a rapidly developing situation in the field, with only 35 minutes elapsing from the time the sheriff attempted to locate the suspect to the warrantless arrest of the suspect at his home. *Lohnes*, 344 N.W.2d at 611. *See also Welsh*, 466 U.S. at 761 (White, J., dissenting) ("The decision to arrest without a warrant typically is made in the field under less-than-optimal circumstances * * *."). Where, however, the arrest is planned in advance, it is less likely the police can claim exigent circumstances.

Shortly after 1 p.m. on Sunday the detective in charge talked with Julie's grandmother on the telephone and learned that a Rob Olson "had been staying upstairs for a day or two with Louanne and Julie," and he obtained the grandmother's promise to call if Rob returned to the house. At 2 p.m. the detective issued a pick-up order for Olson, what he called a "probable cause arrest bulletin." The police were instructed to stay away from the duplex. At 2:45 p.m. the grandmother called the detective again to report Rob had returned. Squad cars were sent to the duplex and, at 3 p.m., the detective (coordinating the arrest efforts from headquarters by radio and telephone) ordered entry of the duplex. Olson was brought to headquarters within an hour. By then the detective who had been in charge was gone. He went off duty at 3 p.m. At least by 2 p.m., then, the police had made plans for Olson's arrest at the dwelling where he was staying at such time as Olson might return. Nevertheless, in the hour that elapsed before any arrest could be made at the duplex, no effort was made to obtain an arrest warrant to enter the dwelling. We do not know if a warrant could have been obtained within that hour, or within a relatively short time thereafter; on the other hand, the state has not suggested the warrant could not have been obtained. We do know a search warrant was obtained on Saturday, the day before, in 2 1/2 hours when the urgency to search an already impounded car was much less.



A warrantless, nonconsensual intrusion of one's dwelling is not to be lightly regarded; indeed, such an entry is considered presumptively unreasonable, and the United States Supreme Court has stressed the state bears a "heavy burden" to establish exigent circumstances. *Welsh*, 466 U.S. at 749. In this particular case, considering all the circumstances, we do not think that burden has been met. We hold defendant's fourth amendment rights were violated.

C.

Defendant asks that all evidence obtained from the illegal arrest be suppressed. This includes Olson's statement, the statements of all persons present at 2406 Fillmore at the time

of his arrest, and Joseph Ecker's statement which was obtained after the police showed him Olson's statement. Evidence obtained as a result of an illegal arrest must be suppressed unless it is obtained by means sufficiently distinguishable from the illegal exploitation to be purged of the primary taint. *Wong Sun v. United States*, 371 U.S. 471, 488 (1963). Here Olson was taken immediately to police headquarters, and the police obtained a statement from him within an hour of his illegal arrest. We believe the statement was tainted and must be suppressed.

While the state has not argued that Olson's statement was untainted, it does argue that admission of Olson's statement at trial was harmless beyond a reasonable doubt. *See State v. Forcier*, 420 N.W.2d 884, 886-87 (Minn. 1988). There was other evidence, says the state, to establish that Olson was the driver of the getaway car, and Olson's statement had no significant impact on the guilty verdicts. At trial, however, the state relied heavily on various details in Olson's statement to point out discrepancies in his story; these discrepancies were then used to argue that Olson was lying about being duped by Ecker. For example, in his statement Olson said he was in the Amoco station about 10 minutes before the robbery to buy cigarettes and pop but the surveillance videotape showed no customer in the store at that time. In final argument, the prosecutor told the jury, "Now the proof of the pudding here, ladies and gentlemen, is in this statement"; and the prosecutor then went on, point by point, to show where Olson's statement did not appear to square with other facts. Olson's credibility was a key issue at trial and use of his statement obtained as a result of the illegal arrest was not harmless error.

We reverse and remand for a new trial. As we have mentioned, defendant claims there is other evidence which should also be suppressed along with his statement. He supports his



claim only by assertion, and the record before us is unenlightening. The trial court on remand will be in a better position to deal with these claims. We need not reach other issues raised by defendant in this appeal.

Reversed and remanded for a new trial.

KEITH, Justice, took no part in the consideration or decision of this case.

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STATE OF MINNESOTA
IN SUPREME COURT

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C3-88-687

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STATE OF MINNESOTA,

Respondent,

vs.

ROBERT DARREN OLSON,

Appellant.

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ORDER

This court, having considered en banc the petition for rehearing in the above entitled cause,

IT IS ORDERED that the petition for rehearing be and hereby is denied and stay vacated.

Dated: March 28, 1989

By the Court:

JOHN E. SIMONETT
Associate Justice

KEITH, Justice, took no part in the consideration or decision of this case.